FILED

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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY: DEPUTY

Rosario R. Tina Pro Se and
Jesus G. Tina, Pro Se
865 Euclid Avenue
San Diego, CA 92114

IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA

ROSARIO R. TINA, and
JESUS G. TINA,

Plaintiffs,

vs.

DOWNEY SAVINGS AND LOAN ASSOCIATION, F.A. and DSL SERVICE COMPANY.

Defendant.

CASE NO. '08 CV 1004 BTM POR

MOTION FOR EX PARTE TEMPORARY RESTRAINING ORDER

MOTION FOR EX PARTE TEMPORARY RESTRAINING ORDER

1.

Plaintiffs further moves this Honorable Court Ex Parte for a Temporary Restraining Order enjoining and restraining the named Defendants from selling the subject property at a non-judicial foreclosure sale on June 24, 2008 or otherwise disposing of the property or removing Plaintiffs from possession thereof.

2.

Plaintiffs will suffer irreparable injury if the foreclosure sale is not enjoined until Plaintiffs have a fair and adequate opportunity to have their claims heard. Plaintiffs may well have the right to rescind the subject mortgage loan transaction. 15 USC 1635 (f) provides for a three (3) year limitation. Further, the Court can adequately determine at this point, the likelihood of Plaintiff prevailing on the merits of their claims due to the number of irregularities in the subject transaction. Plaintiffs submit that they will likely prevail on their claims due to the insufficiency of the Truth In Lending Disclosure and other documents.

3.

In an abundance of caution and based upon legal and equitable considerations, this Court should enter a Preliminary Temporary Restraining Order to enjoin any scheduled foreclosure sale to allow Plaintiff and Defendants to set forth their respective claims, and to further enjoin the disposition or removal of Plaintiffs from possession to maintain the status quo until Plaintiffs claims are heard.

4.

This motion is filed on an emergency basis in that if the foreclosure sale goes forward that Plaintiffs will lose their property, possession of the property and all of their equity in the property even if their claims are meritorious. Plaintiffs request that the Court grant a Preliminary Temporary Restraining Order without bond, as Plaintiff is unable to provide a bond of any kind or type. Further, the sale of the property would cut off Plaintiffs rights under the Truth in Lending Act.

WHEREFORE, Plaintiffs respectfully prays that this Honorable Court grant to them the following relief:

5.

Enter a Preliminary Injunction/Temporary Restraining Order during the pendency of this and

6.

Enter a Preliminary Temporary Restraining Order enjoining and restraining any scheduled foreclosure non-judicial sale of the subject property or from otherwise disposing of the property or removing the Plaintiffs from possession thereof and

7.

Grant the Preliminary Restraining Order without bond and

8.

Grant such other and further relief as the Court deems equitable, appropriate and just.

VERIFICATION

Before me the undersigned authority duly authorized to administer oaths, personally appeared Rosario R. Tina and Jesus G. Tina, Plaintiffs/Affiants, who, after being duly sworn, deposes and say that they have read the foregoing emergency Motion for Ex Parte Temporary Restraining Order, and that, under the penalty of perjury, that the facts and allegations contained therein are true and correct.

Rosario R. Tina, Plaintiff/Affiant
865 Euclid Avenue
San Diego, CA 92114
Phone 619-813-7844

JESUS G. TINA, Plaintiff
865 Euclid Avenue
San Diego, CA 92114
Phone 619-813-7844

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing verified response and Motion for Ex Parte Temporary Restraining Order to CitiResidential Lending at PO Box 11000, Santa Ana, CA 92711-1000 and to Specialized Loan Services, LLC at this 5th, day of April, 2008.

Rosario R. Tina, Plaintiff/Affiant
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